SUPREME COURT OF THE UNITED STATES.

No. 439.

LOUIS HANANER, PLAINTIFF,

vs.

ALDEN M. WOODRUFF.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA,
Eastern District of Arkansas :

Be it remembered that at a Circuit Court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the thirteenth day of April, anno domini one thousand eight hundred and sixty-eight, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Samuel F. Miller, judge of the Supreme Court of the United States, assigned to this circuit, presiding, and Hon. Henry C. Caldwell, district judge, holding said court, the following proceedings were had, to wit:

And on April 29th, A. D. 1868, it being yet of the April term, 1868, the following further proceedings were had, to wit:

LOUIS HANANER
vs. } Debt.
ALDEN M. WOODRUFF.

This case having been submitted to the court without a jury, by written agreement of the parties, and the court having heard the testimony, finds the following facts:

First. The defendant made and delivered to plaintiff, at Memphis, in the State of Tennessee, on the 22d day of December, 1861,
2 his promissory note in writing, of which the following is a true copy:

$3,099 00. MEMPHIS, TENN., *December 22d*, 1861.

Twelve months after date, if not sooner paid, I promise to pay Louis Hanauer, or order, the sum of three thousand and ninety-nine dollars, for value received, to bear interest at the rate of eight per cent. per annum from maturity until paid.

Given under my hand the day of date above written.

[SEAL.] A. M. WOODRUFF.

Second. The only consideration of said note was certain bonds issued by an ordinance of the convention which attempted to carry the State of Arkansas out of the federal Union, by what is called the secession ordinance.

Third. That these bonds were issued for the purpose of supporting the war levied by the insurrectionary bodies then controlling the State of Arkansas against the federal government, and were
3 styled "war bonds" on their face, and the purpose of their issue was well known to both plaintiff and defendant.

Fourth. Said bonds had at the time of the transaction between plaintiff and defendant a value not much below their par value on their face, say ten per cent., at Memphis and in Arkansas.

Fifth. The war bonds received by defendant were not used, or intended to be used, by him in support of the war aforesaid.

4 Peters
7 Howard
42 N Y 63

On these facts two questions of law arose on which the judges of the circuit were divided in opinion, to wit:

I. Was the consideration of the note void on the ground of public policy, so that no action could be sustained on it in the federal courts?

II. If said bonds were a sufficient consideration to sustain
4 the action, what was the measure of damages?

And the division of opinion of said judges on these questions is ordered to be certified to the Supreme Court of the United States.

5 UNITED STATES OF AMERICA,
Eastern District of Arkansas, ss:

I, Charles P. Redmond, clerk of the Circuit Court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct and compared copy of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this third day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

Attest:

CHA'S P. REDMOND, *Clerk.*

Fee for transcript $1 50.

Scholl by Judge Story
13 Barb
19 " "
4 Pet
7 Sumn
Mercy Dubois
Story on Prom Notes
1 Wash

In the Supreme Court of the United States.

AT THE DECEMBER TERM, 1869.

LOUIS HANAUER,

vs. [No. ——

ALDEN M. WOODRUFF.

Certificate of division in opinion between the Judges of the Circuit Court of the United States for the Eastern District of Arkansas.

ARGUMENT FOR HANAUER.

GAZETTE PRINT, LITTLE ROCK, ARK.

ARGUMENT.

The record in this case presents briefly this state of facts:

Hanauer sued Woodruff in the Circuit Court of the United States for the Eastern District of Arkansas, and on issues regularly made up, the case was, by agreement of parties, submitted to the court and after hearing the testimony the court found the following facts:

1st. The defendant made and delivered to plaintiff, at Memphis, in the state of Tennessee, on the 22d day of December, 1861, his promissory note in writing, of which the following is a true copy:

$3,099.00. MEMPHIS, TENN., December 22d, 1861.

Twelve months after date, if not sooner paid, I promise to pay Louis Hanauer, or order, the sum of three thousand and ninety-nine dollars, for value received, to bear interest at the rate of eight per cent. per annum from maturity until paid.

Given under my hand the day of date above written.

[SEAL.] A. M. WOODRUFF.

2nd. The only consideration of said note was certain bonds issued by an ordinance of the convention which attempted to carry the state of Arkansas out of the federal Union, by what is called the secession ordinance.

3d. That these bonds were issued for the purpose of supporting the war levied by the insurrectionary bodies then controlling the state of Arkansas against the Federal Government, and were styled "war bonds" on their face, and the purpose of their issue was well known to both plaintiff and defendant.

4th. Said bonds had at the time of the transaction between plaintiff and defendant a value not much below their par value on their face, say ten per cent., at Memphis and in Arkansas.

5th. The war bonds received by defendant were not used, or intended to be used, by him in support of the war aforesaid.

On these facts two questions of law arose on which the judges of the circuit were divided in opinion, to wit:

1st. Was the consideration of the note void on the ground of public policy so that no action could be sustained on it in the federal courts?

2d. If said bonds were a sufficient consideration to sustain the action, what was the measure of damages?

As to the first proposition for Hanauer, it is submitted, the consideration of the note was not void on the grounds of public policy, and an action can be sustained on it in the federal courts. While it is true these *war bonds* were issued to be used in carrying on the war against the United States, yet if the particular bonds obtained by Woodruff of Hanauer were not used or intended to be used in support of that war, the contract is not void, but stands upon a good and valid consideration. The court found (see 5th proposition) these bonds were not used, or intended to be used in the prosecution of the war. To taint the contract, the intention to use the particular consideration must have existed on the part of both creditor and debtor; the issuing the same by the state of Arkansas can have no bearing here, unless Woodruff and Hanauer both participated, in making this contract, in the intention with which they were issued. The immorality or illegality complained of or pleaded must exist in the particular contract sought to be enforced. When this is established then, as the common law has it, the contract is void, but as the civil law more thoroughly expresses it, the contract is not *clothed with rights of ac-*

tion: 2 *Austin, Juris,* 1015, 16. That this is the true criterion in judging of the consideration, is supported by weight of authority that is overwhelming: *Parker vs. Barker,* 23 *Ark.*, 390; *Phillips vs. Hooker, Law Register, Philadelphia, for Nov.,* 1867, *page* 40 *et. seq.* This last case decides almost the identical question here, and the reasoning of the Supreme Court of North Carolina in that case is unanswerable. See too *Sedgwick Construction* 84, *and notes to* 91; *Utica Insurance Co. vs. Cadwell,* 3 *Wend.*, 301 *and* 302; *Yeates vs. Williams,* 5 *Ark.*, 684; *Holden vs. Meggison,* 2 *Stew.*, (*Ala.*) 175; *Greenwood vs. Curtis,* 6 *Mass.*, 358; *Witherby vs. Mann,* 11 *Johns.*, 518; *Smith vs. Harris,* 3 *Sneed,* (*Tenn.*) 554.

In the *St. Jago de Cuba,* 9 *Wh.*, 409,(5 *Cond.*, 631,) this court held the claims of seamen, for wages, and of material men for supplies, when the parties were innocent of all knowledge of or *participation* in the illegal voyage, good, and preferred to the claim of forfeiture on the part of the government.

In *Armstrong vs. Toler,* 11 *Wh.* 258, (6 *Cond.*, 298,) this court ruled that the contract must grow out of immediately or be connected with an immoral cr illegal act to vitiate it; and if the promise be entirely disconnected with the illegal consideration or act, and is founded on a new consideration it is good, and this, though the party to whom the promise is made is the contriver and the conductor of the illegal act.

The same doctrine was laid down by this court in *Kennett vs. Chambers,* 14 *How.*, 38, where the contract was for an illegal purpose and showed this purpose on its face.

Decisions without number in England and in this country support this view of the matter. *Smith vs. Brumley,* 2 *Doug.*, 697 *and notes; Hodgson vs. Temple,* 5 *Taunt.*, 181; *Simpson vs. Bloss,* 7 *ib.*, 246, *note a; Bulmer's case,* 13 *Ves.*, 313.

Brisbain vs. Lestargett, 1 *Bay,* (*S. C.*) 113; *Merril vs. Milchior,* 30 *Miss.*, (1 *George*) 516; *Ib.*, 343 *and* 27 *Miss.*, 13; 1 *Parsons Cont.*, 365 *and* 580; 2 *Ib.* 252 *et. seq; Sedgwick Const.*, 396 *and* 400; *Brown vs. Tarkington,* 3 *Wall.*, 377; *Benjamin, Sales,* 378 *and* 417; *McBlair vs. Gibbs,* 17 *How.*, 235; *Miller vs. Gould,* 38 *Georgia; Blalock vs. Phillips, Ib; Martin vs.*

Hortin, 1 *Bush*, (*Ky.*) 629 *and* 636. This last case is very expressive.

The principle is not peculiar to this country and England at all: 1 *Domat, page* 513, *paragraph* 1266 *and* 1267; 1 *Pothier, Obl.*, 126 *and* 127; 2 *Ib.*, 1 *and* 16.

Woodruff got the bonds and used them legitimately and they were worth to him not much less than their face. He did not give them to the war, or use them for the war, nor did he intend to do so. To him they were as money, he should not be heard to say they were not money: *Pickard vs. Bankes*, 13, *East*, 20; *Mason vs. Waite*, 17, *Mass.*, 563. Illegal though they might have been in the issuing, yet a party using them to his benefit cannot profit by the loss of another in this way, nor more especially will he be permitted to do so, in alleging his own short-coming towards the goverment: 2 *Pothier*, 271 *and* 334; *Walton vs. Shelby*, 1 *T. R.*, 296; *Jordaine vs. Lashbrook*, 7 *Ib.*, 601.

If it was then illegal or criminal, or against public policy, that Woodruff should live, then this contract may have been void. If it was promotive of morals or public good, or legal that Woodruff should then have died, probably this contract is invalid for he used this *money* for his own support. It was of great value to him; the law will not allow him now to repudiate it. But the question has now been repeatedly settled as to the money called *Confederate money* in the States: *Martin vs. Hortin, sup.*; *Phillips vs. Hooker, sup.*; the two cases in 38 *Georgia, sup.*; 2 *Am. Law Review*, 501, 568, 570 *and* 571; *Law Register, March* 1869, *page* 166; *Robinson vs. Life Ins. Co.* But more in point still are *Evans vs. Richmond, and Mrs. Keppel's case*, both decided by the *Chief Justice* in the Virginia circuit.

But as setting forever at rest this question, and saving the profession of any further disquisitions on the subject, we have the late decision of this court in *Thorington vs. Smith*, reported in January, No., 1870, *Am. Law Review, page* 380. That settles all that was ever imagined to be, or could be controverted on this point. That case went even further than is shown here; there the contract was to be discharged in Confederate money, and this court decided it must

be enforced. It may be asserted then without offending against morals, public policy, or law, that this contract is "*clothed with the rights of action,*" and that an action can be sustained on it in the federal courts.

2. *What is the measure of damages.*

This question is almost solved in determining the other. The parties made their own contract and used words to suit their own intention and to express their own meaning, and there is no allegation of fraud, or deception at all, and the law does not allow the written contract to be thus altered, when there is no charge of fraud: *Roane vs. Greene, et. al.* 24 *Ark.*, 210. The language of the contract is not uncertain or ambiguous and therefore it cannot be explained away on the pleas filed: *Story on Con.*, 14; *Jackson vs. Lill*, 11 *Johns*, 201; *Bond vs. Haas*, 2 *Dallas*, 133. This note was given for so many dollars, and everybody knows what is meant by *dollars*, and nothing less than dollars as contracted for will discharge this contract: *Johnston vs. Hedden*, 2 *Johns. Cases*, 274; *Story, Prom., Notes*, 17 *and* 19; 2 *Meigs' Dig., page* 770, *Sec.* 1345; *State Bank vs. Crease*, 1 *Eng.*, (6 *Ark.*,) 295; *Mrs. Kepwel's case, sup.* It may be that Woodruff contracted to give more than the bonds were worth, when he agreed to give so many *dollars* with interest. But in law a man has the right to give as much as he pleases for an article. It was his own contract, and if he had agreed to give ten times more than he did, he would be held to his agreement unless he pleaded and proved fraud on the part of Hanauer. To permit him to pay off this note at less than his contract binds Woodruff to do, would be making for him a new contract altogether, which the law *will* not do, and which the courts in enforcing the law *ought* not to do.

Woodruff does not pretend here that he was to have paid Hanauer in *war bonds*, in *Confederate money*, or in anything but *dollars*, as was shown in *Thorington vs. Smith, sup.* It was for this reason among others that this court allowed the computation of *Confederate* money in *Thorington vs. Smith.* This reason does not exist here, for the contract is wholly different from the one in that case. As before said, there is no ambiguity to explain, as there

was in *Thorington vs. Smith*. And in that case this court gave a reason again for allowing this, which does not exist here. That contract being payable in Confederate notes and those notes being payable at a day "*which has not arrived and can never arrive*," this court permitted their value in real money or currency to be proved. But here the contract was not payable in that kind of money or in *war bonds* either, but in so many *dollars*. The meaning then of this court in that case, so far from permitting an allowance less than the face of the contract, rejects it, and holds the parties to their agreement as made by them. The contract here is its own best interpreter, and all the *dollars* that we know anything of in this country, in law, are gold and silver dollars, and this has been so ever since the adoption of the federal constitution: *Bronson vs. Rodes*, 7 *Wall., page* 256. But if it should be held that, by virtue of the "*legal tender*" act, anything but gold or silver could discharge this debt, it must be for the amount of the face of the note and interest as stipulated, in the United States currency. In other words, this debt is to be paid in currency now, at the face of the note, with eight per cent. interest in like money from the 22d day of December, 1862, as the contract reads.

It is a fair and legitimate contract, and therefore Hanauer is entitled to recover on it the $3,099.00 with eight per cent. interest from one year after its date, that is 22 *December*, 1862. This is the contract and no other can be substituted in place of it.

Respectfully,

A. H. GARLAND,
Counsel for Hanauer.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 24,236

A. B. WOOD, PLAINTIFF IN ERROR,

vs.

DE FOREST RICHARDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALABAMA.

FILED MARCH 30, 1900.